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IN THE
COURT OF APPEALS OF INDIANA

JASON R. BOHLINGER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0611-CR-513
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0512-FA-69

May 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jason R. Bohlinger appeals the sentence imposed following his plea of guilty to aggravated battery, a class B felony.[1] Bohlinger presents the following restated issue for review: Did the trial court properly order his sentence in this cause to be served consecutively to his sentence in a separate cause?

We affirm.

On December 15, 2005, Bohlinger knowingly inflicted injury on Rufus Barnes, and as a result, caused Barnes to suffer a protracted loss or impairment of a bodily member or organ. The State charged Bohlinger with robbery as a class A felony, battery as a class C felony, and aggravated battery, a class B felony, and alleged that Bohlinger was a habitual offender. These charges were filed under cause number 02D04-0512-FA-69 (FA-69). At the time Bohlinger committed the offense against Barnes, he was on bond from a charge of forgery as a class C felony, which was filed under cause number 02D04-0502-FC-38 (FC-38).

On July 11, 2006, Bohlinger entered into a written plea agreement, wherein he agreed to plead guilty to the aggravated battery charge and to receive an executed sentence of twenty years in exchange for the State's dismissal of the charges for robbery and battery, as well as the habitual offender allegation. That same day, Bohlinger pleaded guilty to aggravated battery. The trial court took his plea under advisement and, pursuant to a request from Bohlinger's attorney, set Bohlinger's sentencing hearing to coincide with his sentencing hearing from cause number 02D04-0603-FB-47 (FB-47), a

[1] Ind. Code Ann. § 35-42-2-1.5 (West 2004).

case in which a jury found Bohlinger guilty of attempted robbery as a class B felony, intimidation as a class D felony, and being a habitual offender.

On July 17, 2006, the trial court held the sentencing hearing on both FA-69 and FB-47. In FA-69, the trial court sentenced Bohlinger, pursuant to the terms of the plea agreement, to twenty years executed. The parties agreed that the trial court was required to run this twenty-year sentence consecutive to the eight-year sentence that Bohlinger received from his forgery conviction in FC-38 due to the fact that he was on bond at the time he committed the aggravated battery. In FB-47, the trial court sentenced Bohlinger to fifteen years for his attempted robbery conviction, which was enhanced by thirty years for his habitual offender adjudication, to be served consecutively to two years for his intimidation conviction.[2] Thus, in FB-47, the trial court ordered that Bohlinger serve an aggregate sentence of forty-seven years. Bohlinger asked the trial court to order his sentence from FA-69 to be served concurrently to his sentence in FB-47 because the aggravated battery to which he pleaded guilty in FA-69 took place "within a relatively short period of time" from the acts of attempted robbery and intimidation for which a jury found him guilty in FB-47. *Sentencing Transcript* at 12-13. The State argued that the sentences in FA-69 and FB-47 should be served consecutively because the crimes in those causes were separate crimes against separate victims—specifically, FA-69 involved

[2] The trial court explained that it enhanced Bohlinger's sentences in FB-47 due to his "lengthy criminal history" and ordered the attempted robbery and intimidation sentences to be served consecutively because they were "two separate individual offenses" due to the fact that after Bohlinger had attempted to rob the victim, he committed the intimidation against the victim when he tried to get the victim not to testify. *Sentencing Transcript* at 10-11.

Bohlinger's aggravated battery against Barnes and FB-47 involved Bohlinger's attempted robbery and intimidation of Bohlinger's niece. The trial court agreed with the State's argument and noted:

> I'm going to find that they are separate and distinct acts and therefore the aggravated battery charge [to which] Defendant has pled guilty and convicted of [is] a separate offense and necessarily should in my opinion, must be sentenced separately. In order to do so this sentence [in FA-69] is ordered to be run consecutively with that of FB-47.

Id. at 13. Bohlinger now appeals from his sentence in FA-69.

Bohlinger argues that the trial court improperly ordered his sentence in FA-69 to be served consecutively to his sentence from FB-47. Bohlinger argues that the trial court's consecutive sentencing was improper because the trial court failed to establish any reason for the sentences to be served consecutively.[3] On the other hand, the State argues that the trial court's order of consecutive sentences was proper because it had statutory authority to do so under Ind. Code Ann. § 35-50-1-2(c) (West, PREMISE through 2006 2nd Regular Sess.) and that the aggravating factors of separate victims and crimes and Bohlinger's lengthy criminal history provided sufficient support for the imposition of consecutive sentences. We agree with the State.

I.C. § 35-50-1-2(c) provides, in relevant part:

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[3] Bohlinger also argues that the trial court erred by failing to indicate in its sentencing order that the sentence in FA-69 was to be served consecutively to the sentence in FB-47. It is true that the trial court's written sentencing order does not explicitly provide that the FA-69 sentence was consecutive to FB-47; however, during the sentencing hearing, the trial court stated that "this [FA-69] sentence is ordered to be run consecutively with that of FB-47." *Sentencing Transcript* at 13. Thus, we conclude that Bohlinger's argument is without merit. *See Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) ("In reviewing a sentencing decision in a non-capital case, we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.").

> Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:
>
> (1) aggravating circumstances in IC 35-38-1-7.1(a); and
>
> (2) mitigating circumstances in IC 35-38-1-7.1(b);
>
> in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time.

"[T]he determination of whether to impose consecutive or concurrent sentences is entirely at the discretion of the trial judge." *Bryant v. State*, 841 N.E.2d 1154, 1157 (Ind. 2006). We will not find an abuse of discretion in a trial court's imposition of consecutive sentences where there are sufficient aggravating circumstances to support the trial court's decision to run the sentences consecutively. *Bryant v. State*, 841 N.E.2d 1154.

Here, the trial court held a combined sentencing hearing for Bohlinger's aggravated battery conviction following his guilty plea in FA-69 and his attempted robbery and intimidation convictions and habitual offender adjudication following a jury trial in FB-47. During the hearing the trial court discussed Bohlinger's criminal history—which, according to the presentence investigation, includes two juvenile adjudications, twelve misdemeanor convictions, and six felony convictions—and the separate victims and crimes in the two causes. When imposing Bohlinger's sentence in FB-47, the trial court discussed the aggravating factor of his lengthy criminal history:

> You're a career criminal Mr. Bohlinger. Career violent criminal. 1983 as a juvenile you were found delinquent as a result of burglaries. In 86, robbery and criminal confinement. 88, burglary. 89, perjury, mischief, invasion of privacy, those are misdemeanors but they're significant violations of others [sic] rights. Resisting law enforcement as a D felony, invasion of privacy

> again, criminal mischief. You have a substantial and violent criminal history. . . . [Y]ou've got a lengthy criminal history as an aggravating circumstance and that lengthy history outweighs what ever [sic] mitigating [circumstances] there might be in this case.

Sentencing Transcript at 9-10.

Then, when imposing Bohlinger's sentence in FA-69, the trial court rejected Bohlinger's argument that the twenty-year sentence should be concurrent to the sentence in FB-47 and pointed to the separate nature of the offenses and multiple victims in each cause when ordering Bohlinger's sentence in FA-69 to be served consecutively to his sentence in FB-47. We have held that the existence of multiple victims is a valid aggravator that can support a trial court's imposition of consecutive sentences. *French v. State*, 839 N.E.2d 196 (Ind. Ct. App. 2005), *trans. denied*. Additionally, the Indiana Supreme Court has stated that when a defendant commits the same offense against more than one victim, consecutive sentences "vindicate the fact that there were separate harms and separate acts against more than one person." *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003).

It was within the trial court's discretion to impose consecutive sentences, and given the discussion of the aggravating circumstances of Bohlinger's criminal history and the existence of multiple victims during the sentencing hearing, we conclude there was no abuse of that discretion. *See, e.g.*, *Bryant v. State*, 841 N.E.2d 1154 (affirming the trial court's imposition of consecutive sentences); *French v. State*, 839 N.E.2d 196 (affirming the trial court's imposition of consecutive sentencing where it was based on the fact that multiple victims had suffered); *Dixon v. State*, 825 N.E.2d 1269 (Ind. Ct. App. 2005)

(concluding that the trial court acted within its discretion when it ordered the defendant to serve his sentence consecutive to a sentence he received in another county based upon aggravating circumstances and the nature of case), *trans. denied*.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.